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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 PHISH, INC., a Delaware corporation,

10 Plaintiff,

11 v.

12 VARIOUS JOHN DOES, JANE DOES, AND
ABC COMPANIES,

13 Defendants.
14

Case No. 2:23-cv-00547-JHC

**PRELIMINARY INJUNCTION AND
SEIZURE ORDER;
ORDER TO UNSEAL FILE**

15 Plaintiff, Phish Inc. (“Plaintiff”), having applied *ex parte* against unknown individuals
16 and entities (collectively, “Defendants”) for a temporary restraining order, order permitting civil
17 seizure, order to show cause for preliminary injunction, and order sealing file pursuant to Federal
18 Rule of Civil Procedure 65 and the Lanham Act (15 U.S.C. §1051, et seq.), as amended by the
19 Trademark Counterfeiting Act of 1984, Public Law 98-473 (the “Lanham Act”), for the reason
20 that Defendants are and will be manufacturing, distributing, offering for sale and selling goods
21 bearing counterfeit reproductions of trademarks owned and controlled by Plaintiff (“Counterfeit
22 Merchandise”), and the Court having reviewed the complaint, the memorandum of law, the
23 declarations of Kevin Shapiro, Jeffrey L. Laytin, Andrew R. Escobar, and Andrew R. Escobar
24 Re: Seizure and the exhibits thereto, the Court finds:

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26 **PRELIMINARY INJUNCTION AND SEIZURE
ORDER - 1**

1 1) Defendants' manufacture, import, distribution, offer for sale and/or sale of
2 Counterfeit Merchandise has caused, and if not stopped will continue to cause, immediate and
3 irreparable injury to Plaintiff;

4 2) Plaintiff has demonstrated evidence of the offer for sale of counterfeit and/or
5 unauthorized merchandise in connection with the 2023 Phish Tour, and is therefore likely to
6 succeed in showing Defendants have used and are continuing to use counterfeit and/or
7 unauthorized and infringing copies of Plaintiff's federally registered trademarks and unregistered
8 trademarks, names and likenesses set forth below in connection with the manufacture, import,
9 distribution, offer for sale and/or sale of Counterfeit Merchandise on the 2023 Phish Tour;

10 3) Plaintiff has also shown sufficiently serious questions going to the merits of its
11 claims to make them a fair ground for litigation, and that the harm to Plaintiff from denial of the
12 requested *ex parte* order would outweigh the harm to Defendants' legitimate interests in the
13 event such an order were granted, and that a preliminary injunction would serve the public
14 interest;

15 4) Defendants, or other persons acting in concert with Defendants, would likely
16 destroy, move, hide or otherwise make inaccessible to the Court Defendants' Counterfeit
17 Merchandise, any business records related thereto, and the profits derived therefrom, absent an
18 *ex parte* order, thereby denying Plaintiff access to relevant evidence and frustrating the ultimate
19 relief Plaintiff seeks in this action;

20 5) Plaintiff has demonstrated the location(s) at which Defendants are or will be
21 distributing, offering for sale and/or selling Counterfeit Merchandise; and

22 6) Entry of an order other than a preliminary injunction and seizure order would not
23 adequately achieve the purposes of the Lanham Act to preserve Plaintiff's remedies for
24 trademark counterfeiting, including, inter alia, the removal of Counterfeit Merchandise from the
25 marketplace and destruction of same, and an award to Plaintiff of lost profits or damages.

1 Therefore, IT IS HEREBY ORDERED that Defendants, various John Does, Jane Does
2 and ABC Companies, their true identities being unknown, are hereby preliminarily enjoined
3 from manufacturing, distributing, offering or holding for sale, or selling the Counterfeit
4 Merchandise, consisting of any clothing, jewelry, photographs, posters, recordings and other
5 merchandise bearing the trademarks, service marks, likenesses, images, trade names or logos, or
6 any colorable imitations thereof of the musical group known as PHISH and each of its individual
7 members TREY ANASTASIO, MIKE GORDON, JON FISHMAN, and PAGE MCCONNELL
8 and their federally registered marks: PHISH FOOD, U.S. Registration Number 2173816; PHISH,
9 U.S. Reg. No. 2096010; PHISH, U.S. Reg. No. 2029049; PHISH, U.S. Reg. No. 2029048;
10 PHISH, U.S. Reg. No. 1917861; PHISH, U.S. Reg. No. 1782981; and PHISH and Design, U.S.
11 Reg. No. 1930480; OYSTERHEAD, U.S. Reg. No. 2662635; GAMEHENDGE, U.S. Reg. No.
12 2048310; GAMEHENDGE, U.S. Reg. No. 2053513 and WATERWHEEL, U.S. Reg. No.
13 2247438; and their unregistered mark VIDA BLUE (collectively, the “Plaintiff’s Marks”).

14 AND IT APPEARING TO THE COURT that Defendants are likely and about to sell and
15 distribute the Counterfeit Merchandise bearing the Plaintiff’s Marks during the remaining shows
16 of the 2023 Phish Tour and will carry out such acts during the entirety of the 2023 Phish Tour set
17 forth below, unless enjoined by order of the Court,

18 IT IS FURTHER ORDERED that pending hearing and determination of this application,
19 the Defendants, their agents, servants, employees, attorneys, successors and assigns and all
20 persons, firms and corporations acting in concert with them, and each of them be and hereby are
21 preliminarily enjoined and restrained from manufacturing, distributing, offering or holding for
22 sale, advertising and/or selling Counterfeit Merchandise bearing any of the Plaintiff’s Marks;

23 AND IT IS FURTHER ORDERED that the United States Marshal or other federal, state
24 or local law enforcement officers, or off-duty officers located within each district in which
25 Plaintiff enforces this order, assisted by one or more attorneys or agents of Plaintiff, are hereby
26 authorized to seize and impound any and all Counterfeit Merchandise which Defendants sell,

offer for sale or are holding for sale, including from any bag, carton, container, vehicle, or other means of carriage in which the Counterfeit Merchandise is found from ten (10) hours before to six (6) hours after any performance by Phish within a twenty (20) mile vicinity of the venues at which Phish shall be performing, including, but not limited to, the following current venues and dates of the 2023 Phish Tour:

DATE	VENUE
July 11-12, 2023	• Orion Amphitheater, Huntsville, AL
July 15-16, 2023	• Ameris Bank Amphitheater, Alpharetta, GA
July 18-19, 2023	• Live Oak Bank Pavilion at Riverfront Park, Wilmington, NC
July 21-22, 2023	• The Pavilion at Star Lake, Burgettstown, PA
July 23, 2023	• St. Joseph's Health Amphitheater at Lakeview, Syracuse, NY
July 25-26, 2023	• TD Pavilion at the Mann, Philadelphia, PA
July 28-August 5, 2023	• Madison Square Garden, New York, NY
August 31-September 3, 2023	• Dick's Sporting Goods Park, Commerce City, CO

AND IT IS FURTHER ORDERED that this order be and is hereby conditioned upon Plaintiff's maintaining with the Clerk of this Court an undertaking in the form of a monetary deposit now on file in the amount of \$10,000 to secure payment of such costs and damages not to exceed such sum as may be suffered or sustained by any party who is found to be wrongfully enjoined hereby;

AND IT IS FURTHER ORDERED that service of a copy of this order to show cause together with the summons and complaint in this action be made upon the Defendants by the United States Marshal, other federal, state or local law enforcement officers or by any person over the age of eighteen (18) years not a party to this action selected for that purpose by the Plaintiff, at the time the seizure provided herein is effected and that such service shall be deemed good and sufficient, provided that a complete set of all moving papers submitted in support of this order shall be promptly provided to any defendant or counsel requesting same;

1 AND IT IS FURTHER ORDERED that the process server shall offer a receipt to each
2 person from whom Counterfeit Merchandise is seized and that the Plaintiff shall be deemed
3 substitute custodian for all Counterfeit Merchandise seized, which shall be maintained in a
4 secure location pending further order of this Court;

5 AND IT IS FURTHER ORDERED that this matter be set for status and a hearing with
6 respect to Plaintiff's execution of this seizure order for 9:00 a.m. on Monday, September 11,
7 2023, with Defendants' responsive papers, if any, filed with the Clerk of this Court and served
8 upon the attorneys for Plaintiff by delivering copies to Plaintiff's counsel at the address set forth
9 below, seven (7) days before the hearing. Any reply shall be filed and served by Plaintiff by
10 4:30 p.m. on Friday, September 8, 2023. The hearing will be in person;

11 AND IT IS FINALLY ORDERED that the Clerk of the Court unseal the file.

12 The Court's prior orders in this matter at Dkt. ## 10 & 13 are no longer in effect.

13 Dated this 25th day of April, 2023.

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16 John H. Chun
17 United States District Judge
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